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No. 77-993

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNION OIL COMPANY OF CALIFORNIA, PETITIONER

v.

ASHLAND OIL COMPANY OF CALIFORNIA
and DEPARTMENT OF ENERGY

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

BRIEF FOR THE DEPARTMENT OF ENERGY IN OPPOSITION

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OPINION BELOW

The opinion of the Temporary Emergency Court of Appeals (Pet. App. 1-15) is reported at 567 F. 2d 984. The district court did not write an opinion.

JURISDICTION

The judgment of the Temporary Emergency Court of Appeals (Pet. App. 16) was entered on December 12, 1977. The petition for a writ of certiorari was filed on January 11, 1978. The jurisdiction of this Court is invoked under Section 705(c)(2) of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 607, incorporating 87 Stat. 633, 15 U.S.C. (1976 ed.) 754(a)(1), and 85 Stat. 750, 12 U.S.C. (1976 ed.) 1904 note.

QUESTION PRESENTED

Whether California law, when applied in a federal action alleging overcharges in violation of the Emergency Petroleum Allocation Act of 1973, provides a one-year statute of limitations on treble damage claims but a three-year limitations period on claims for compensatory relief.

STATEMENT

On March 23, 1977, respondent Ashland Oil Company of California commenced this action in the United States District Court for the Northern District of California, alleging that, between January 1975 and February 1976, petitioner sold gasoline to Ashland at prices in excess of those permitted by the Federal Energy Administration's Mandatory Petroleum Price Regulations, 10 C.F.R. Part 212. Ashland sought recovery of the overcharges and treble damages, under Section 210(b) of the Economic Stabilization Act of 1970, as added, 85 Stat. 748, 12 U.S.C. (1976 ed.) 1904 note, as incorporated in Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 87 Stat. 633, as amended, 15 U.S.C. (1976 ed.) 754(a)(1).[1]

Petitioner moved to dismiss on statute of limitations grounds. Because the federal substantive law did not specify a limitations period, the district court turned to state law and concluded (Pet. App. 4 n. 7, 17) that Ashland's action was wholly barred by Cal. Code Civ.

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[1]The Federal Energy Administration ("FEA") was named as a defendant in response to the admonition in *Longview Refining Co.* v. *Shore*, 554 F. 2d 1006, 1023-1024 (T.E.C.A.), certiorari denied, October 3, 1977 (No. 76-1863). Pursuant to the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (to be codified in 42 U.S.C. 7101 *et seq.*), and Executive Order 12009, 42 Fed. Reg. 46267 (September 13, 1977), FEA became part of the newly-created Department of Energy on October 1, 1977.

Pro. § 340(1) (West's 1954), which prescribes a one-year statute of limitations for "[a]n action upon a statute for a penalty or forfeiture." The court held that the claim for recovery of overcharges could not be separated from the treble damage claim, and that because a statutory authorization of a treble damage remedy is penal in character, both claims are governed by Section 340(1).

The court of appeals affirmed with respect to the treble damage claim but reversed with respect to the claim for recovery of overcharges (Pet. App. 1-15). The court held that the claim for compensatory relief is governed not by Section 340(1), but by Cal. Code Civ. Pro. § 338 (West's 1954), which provides a three-year statute of limitations for "[a]n action upon a liability created by statute, other than a penalty or forfeiture." Petitioner challenges this aspect of the court of appeals' decision.

ARGUMENT

Section 210 of the Economic Stabilization Act of 1970 ("ESA") provides for both compensatory and exemplary damages. Compensatory relief (*i.e.*, recovery of amounts charged in excess of permissible prices) is available in all overcharge cases, provided that the purchaser requested a refund from the seller and did not receive repayment within 90 days. Exemplary damages are available only when an overcharge was intentional. No request to the seller is necessary in the latter case.

The court of appeals properly concluded that state law, which furnishes the period of limitations here, treats Section 210 as two different rights of action for statute of limitations purposes. This ruling conforms with earlier decisions of the court of appeals. See *Longview Refining Co.* v. *Shore*, 554 F. 2d 1006 (T.E.C.A.), certiorari denied, October 3, 1977 (No. 76-1863); *Evans* v. *Suntreat Growers & Shippers, Inc.*, 531 F. 2d 568 (T.E.C.A.); *Manning* v. *University of Notre Dame du Lac*, 484 F. 2d 501 (T.E.C.A.).

Petitioner relies (Pet. 12-14) on a number of cases involving the definition of a "cause of action"—a term that was deleted from the federal rules because of its uncanny ability to produce sterile debate about verbal questions. This Court has called the entire concept of causes of action "outmoded." *Aldinger* v. *Howard,* 427 U.S. 1, 8. The concept is useful today, if at all, only to answer questions about the scope of *res judicata.*

The court of appeals in this case properly declined to rely on the old cases concerning causes of action. It looked, instead, to the relevant state statutes of limitations and considered the federal policy interests reflected in ESA and the Emergency Petroleum Allocation Act of 1973 ("EPAA"). In the absence of a limitations period provided by Congress, a federal court usually should apply the most analogous state statute of limitations. See, *e.g., Runyon* v. *McCrary,* 427 U.S. 160, 179-180; *Auto Workers* v. *Hoosier Corp.,* 383 U.S. 696, 701-705; *Holmberg* v. *Armbrecht,* 327 U.S. 392, 395. In doing so, however, the court must take into account the policy expressed by Congress in the governing substantive law. *Occidental Life Insurance Co.* v. *Equal Employment Opportunity Commission,* 432 U.S. 355, 367.

The court of appeals' application of California's statutes of limitations respects both the state laws and the important federal interests. Sections 338(1) and 340(1) of the California Code of Civil Procedure distinguish between ordinary statutory actions and actions on statutes that impose a penalty. Petitioner has not explained why Ashland's action to recover overcharges should be treated as an action "for a penalty" for statute of limitations purposes. Moreover, on several occasions, California courts have approved different limitations periods for exemplary and compensatory damage claims arising out of the same factual situation. See Pet. App.

10-15, discussing *Stock* v. *Meek,* 35 Cal. 2d 809, 221 P. 2d 15; *Porter* v. *Arthur Murray, Inc.,* 249 Cal. App. 2d 410, 57 Cal. Rptr. 554; *Stone* v. *James,* 142 Cal. App. 2d 738, 299 P. 2d 305. There is no reason for this Court to review the court of appeals' decision that, under California law, a three-year period of limitations applies to compensatory damages even though a one-year period applies to exemplary damages arising out of the same wrong.

The result produced by the court of appeals' decision is consistent with the federal policies underlying ESA and EPAA. Those statutes were intended to ensure that prices on certain commodities would not exceed maximum levels set by the federal government. Suits to recover overcharges were authorized in order to provide a remedy for private parties injured by illegal pricing practices and thereby to aid federal agencies in their enforcement of price control legislation. These objectives would not be served if actions for compensatory relief were governed by the one-year statute of limitations advocated by petitioner. If Congress had not authorized the recovery of treble damages for intentional overcharges, Ashland's suit to recover single damages for ordinary (negligent) overcharges undoubtedly would be governed by a three-year period of limitations. It would defeat the evident intent of Congress in authorizing treble damages to hold that this authorization shortened the limitations period for single damages, thus making them less effective as a remedy.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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